

REMARKS

Claims 1-44 are pending in this application. Attached hereto is a complete listing of all claims in the application, with their current status listed parenthetically. By this Response, claims 1, 15 and 29 have been amended, and are presented with markings indicating their current amendments.

Applicant acknowledges with appreciation the courtesies extended by the Examiner to Applicant's representative in the telephonic interview conducted July 27, 2005. In the interview, the bases for the rejection of the instant application under 35 U.S.C. § 103(a) were discussed, but no agreement was reached regarding the appropriateness of combining the two cited references, Burke and Straub. In an effort aimed at continued, fruitful prosecution, Applicant submits this response presenting new arguments, but maintains that there is absolutely no motivation to combine Burke and Straub, and that the Examiner is practicing textbook hindsight reconstruction, contrary to the warnings, and requirements contained in M.P.E.P. § 2142.

For example, in the Response to Arguments section, the Examiner admits that Burke teaches utilizing a 270-400 kHz frequency band for communication (through a copper pair telephone wire), and then states that the motivation to use of the high frequency wireless communication method taught in Straub "is to increase the amount of system channels and use available off-the-shelf high frequency wireless communication equipment." The Examiner fails to explain how the "high frequency wireless communication equipment" taught in Straub can be combined with the low frequency, wire line system taught in Burke.

More importantly, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." M.P.E.P. § 2143.01

Neither Burke nor Straub contain any teaching or suggestion of why it would be desirable to combine a plug-and-play wire line telephone system with a high-frequency wireless communication system.

The only motivation presented is the Examiner's own, generated by impermissible hindsight reconstruction.

Rejection Under 35 U.S.C. § 103(a)

In paragraphs 1-4 of the Office Action, claims 1-4, 6-10, 13-18, 20-24, 27-32, 34-38, 41-44 stand rejected as unpatentable under 35 U.S.C. § 103(a) over U.S. patent 5,887,054 ("Burke") in view of U.S. Patent 5,930,685 ("Straub"), and further in view of U.S. patent 6,512,746 ("Sand"). Applicant respectfully traverses this rejection.

Applicant's amended independent claim 1 now recites, in part:

". . .classifying the channel into a grade of service class based on the assigned rating, the grade of service class comprising an alphanumeric grade, a video grade, an audio grade, and a not suitable grade. . ."

Applicant's independent claims 15 and 29 have also been amended to include the elements recited above.

In the Office Action, the Examiner states:

"Burke does not disclose estimating a potential effect of the noise on a transmission quality of the channel based on the obtained information. However, Straub discloses a system wherein a Bit Error Rate (BER) of a channel is predicted based on measured noise of the channel (see column 5, lines 18-30). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Burke because doing so would make the system more robust and reliable."

Applicant agrees with the Examiner that Burke fails to teach all of the elements found in claim 1.

The Examiner then cites Straub for teaching "estimating a potential effect of the noise on a transmission quality of the channel based on the obtained information" and finally, Sand for teaching "classifying the channel into a grade of service class based on the assigned rating."

Sand teaches a method and apparatus for measuring voice grade of service in an IP network. Specifically, Sand teaches Internet Protocol (IP) telephony, and focuses exclusively on teaching the measurement of voice grade of service (col. 2, lines 18-67 and col. 3, lines 1-60).

Sand contains no teaching or suggestion of video transmission, or grading a video communication channel, nor does Sand teach the concept of grading a channel as "not suitable," as recited in Applicant's amended independent claims 1, 15, and 29.

Straub is completely silent as to a teaching or suggestion of any type of communication channel grading, and instead teaches fast automatic link establishment for high frequency wireless communications.

Burke teaches a play and plug telephone system that teaches ranking voice channels. "[A] 'quality table' by rank ordering the 17 voice channels from best to worst (bear in mind that even the term 'worst' is used, this a relative to the noise performance of the other 16 channels and, as such, the noise environment of the 17th channel may by [sic] more than acceptable in terms of performance)" [col. 4, lines 61-67].

However, Burke contains no teaching or suggestion of video transmission, or grading a video communication channel, nor does Burke teach the concept of grading a channel as "not suitable," but instead, teaches that all of the channels are "more than acceptable."

In view of the above discussion, Applicant respectfully submits that the Section 103 rejection of independent claims 1, 15 and 29 has been traversed.

In paragraph 5 of the Office Action, the Examiner rejects independent claims 43 and 44 as obvious in view of Burke, but admits that "Burke does not teach the channels as wireless and ultra-wideband, however, Burke teaches using RF modems utilizing a copper pair, line 1, as transmission media." The Examiner then asserts that it would have been obvious "to utilize air as a transmission media for the system of Burke, making the channels wireless and utilizing all known RF bandwidth, including ultra-wideband, to increase the amount of available RF channels in the system."

However, Burke contains absolutely no teaching or suggestion of wireless communication whatsoever. Burke uses the RF modems to establish multiple communication channels within a copper pair telephone line, but does not teach or suggest that his system may be employed in a wireless communication scheme or that his system may employ ultra-wideband communication technology.

"To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all the factual information, the examiner must then make a determination whether the claimed invention **"as a whole"** would have been obvious at that time." M.P.E.P. § 2142 [emphasis added]

Certainly a person of ordinary skill in the art, reviewing only the teachings of Burke, would not have been motivated to modify Burke into a wireless system, and absolutely would not have been motivated to modify Burke to use ultra-wideband communication technology.

This is because there is absolutely no teaching or suggestion in Burke of wireless communication, nor of ultra-wideband communication technology. The only motivation presented is the Examiner's own, again generated by impermissible hindsight reconstruction.

In view of the above discussion, Applicant respectfully submits that the Section 103 rejection of independent claims 43 and 44 has been traversed.

In paragraphs 6-16 the Examiner rejects the dependent claims as obvious in view of Burke, Sand, Straub, U.S. patent 6,694,104 ("Caplan"), U.S. patent 5,495,483 ("Grube"), and U.S. patent 5,754,353 ("Behrens"). However, because claims 2-4, 6-10, 13-14, 16-18, 20-24, 27-28, 30-38 and 41-42 depend from either claim 1, 15 or 29, it is respectfully submitted that the rejection of claims 2-4, 6-10, 13-14, 16-18, 20-24, 27-28, 30-38 and 41-42 have been traversed by virtue of their dependency from either claim 1, 15 or 29. M.P.E.P. § 2143.03.

Conclusion

Applicant believes that this Response has addressed all items in the Office Action and now places the application in condition for allowance. Accordingly, favorable reconsideration and allowance of claims 1-44 at an early date is solicited. No fee is believed due with this response. However, the Commissioner is authorized to charge any fee required to our Deposit Account No. 50-3143, in the name of Pulse-Link, Inc. Should any issues remain unresolved, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

Date

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